

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	1. TRANSMITTAL NUMBER: 03-13	2. STATE Alaska
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
4. PROPOSED EFFECTIVE DATE December 1, 2003		

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN
 ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN
 ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR 433.36	7. FEDERAL BUDGET IMPACT: a. FFY 2004 \$ 120,000 b. FFY 2005 \$ 120,000
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: <i>Plan Section 4.17, page 53 and Attachment 4.17-A, new pages 1-2.</i> <i>Plan Section 4.17, pages 53-53(e) (P+I)</i> <i>Attachment 4.17A, pages 1-3</i>	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): <i>Plan Section 4.17, page 53, TN #83-7</i> <i>Alaska (03-13)</i> <i>Approved: 07/22/04</i> <i>Effective: 12/01/03</i>

10. SUBJECT OF AMENDMENT:
Estate Recovery Process Changes

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED:
Governor does not wish to comment

12. SIGNATURE OF STATE AGENCY OFFICIAL: <i>Bob Labbe</i>	16. RETURN TO: Alaska Department of Health and Social Services Office of the Commissioner P.O. Box 110601 Juneau, Alaska 99811-0601
13. TYPED NAME: Bob Labbe	
14. TITLE: Deputy Commissioner, Medicaid Director Department of Health and Social Services	
15. DATE SUBMITTED: December 30, 2003	

FOR REGIONAL OFFICE USE ONLY	
17. DATE RECEIVED: DEC 31 2003	18. DATE APPROVED: JUL 22 2004
PLAN APPROVED - ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL: DEC - 1 2003	20. SIGNATURE OF REGIONAL OFFICIAL: <i>[Signature]</i>
21. TYPED NAME: Karen S. O'Connor	22. TITLE: Associate Regional Administrator Division of Medicaid & Children's Health
23. REMARKS: Pen and ink changes authorized by the state on 5/20/04	

Revision: HCFA-PM-95-3 (MB)
MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

Citation
42 CFR 433.36(c)
1902(a)(18) and
1917(a) and (b) of
the Act

4.17 Liens and Adjustments or Recoveries

(a) Liens

X The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917(a) of the Act and regulations at 42 CFR 433.36(c)-(g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

— The State imposes liens on real property on account of benefits incorrectly paid.

X The State imposes TEFRA liens 1917(a)(1)(B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.

The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (NOTE: If the State indicates in its State plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)

X The State imposes liens on both real and personal property of an individual after the individual's death.

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Supersedes Approval Date JUL 22 2004 Effective Date December 1, 2003

TN No. 83-7

Revision: HCFA-PM-95-3 (MB)
MAY 1995

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State/Territory:

(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h)-(i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

— Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.

- (2) — The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a)(1)(B) (even if it does not impose those liens).

- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

— In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

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Supersedes Approval Date 12/2/2004 Effective Date December 1, 2003

TN No. 83-7

Revision: HCFA-PM-95-3 (MB)
MAY 1995

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State/Territory:

- (4) ☐ The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy as provided for in Attachment 2.6-A, Supplement 8b.
- ☐ The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long term care services provided on behalf of the individual. (States other than California, Connecticut, Indiana, Iowa, and New York which provide long term care insurance policy-based asset or resource disregard must select this entry. These five States may either check this entry or one of the following entries.)
- ☐ The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility or other long term care services provided on behalf of the individual.
- ☒ The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility or other long term care services provided on behalf of the individual to the extent described below:

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Supersedes Approval Date UL 22 2004 Effective Date December 1, 2003

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Revision: HCFA-PM-95-3
MAY 1995

(MB)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

(c) Adjustments or Recoveries: Limitations

The State complies with the requirements of section 1917(b)(2) of the Act and regulations at 42 CFR §433.36(h)-(i).

- (1) Adjustment or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.
- (2) With respect to liens on the home of any individual who the State determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to the cost of care, the State will not seek adjustment or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
 - (a) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date that the individual was institutionalized), or
 - (b) a child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who establishes to the satisfaction of the State that the care the child provided permitted the individual to reside at home rather than become institutionalized.
- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

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Supersedes Approval Date JUL 22 2004 Effective Date December 1, 2003

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Revision: HCFA-PM-95-3 (MB)
MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

(d) ATTACHMENT 4.17-A

- (1) Specifies the procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the procedure meets the requirements of 42 CFR 433.36(d).
- (2) Specifies the criteria by which a son or a daughter can establish that he or she has been providing care, as specified under 42 CFR 433.36(f).
- (3) Defines the following terms:
 - o estate (at a minimum, estate as defined under State probate law). Except for the grandfathered States listed in section 4.17(b)(3), if the State provides a disregard for assets or resources for any individual who received or is entitled to receive benefits under a long term care insurance policy, the definition of estate must include all real, personal property, and assets of an individual (including any property or assets in which the individual had any legal title or interest at the time of death to the extent of the interest and also including the assets conveyed through devices such as joint tenancy, life estate, living trust, or other arrangement),
 - o individual's home,
 - o equity interest in the home,
 - o residing in the home for at least 1 or 2 years,
 - o on a continuous basis,
 - o discharge from the medical institution and return home, and
 - o lawfully residing.

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Supersedes Approval Date Jul 22 2004 Effective Date December 1, 2003

TN No. 83-7

Revision: HCFA-PM-95-3 (MB)
MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

- (4) Describes the standards and procedures for waiving estate recovery when it would cause undue hardship.
- (5) Defines when adjustment or recovery is not cost-effective. Defines cost-effective and includes methodology or thresholds used to determine cost-effectiveness.
- (6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.

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Supersedes Approval Date 4/1 22 2004 Effective Date December 1, 2003

TN No. 83-7

Liens and Adjustments or Recoveries

Procedures and Definitions:

I. Procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

In accordance with 42 CFR 433.36, the state presumes that a client residing in a medical institution for at least 120 consecutive days is not reasonably expected to return home. Transfers from one medical institution to another do not interrupt the 120 day period but discharge from a medical institution to a community setting will terminate the 120 day period. Re-admission to a medical institution starts a new 120 day period. Please see Section VI below for advance notice and waiver application requirements and hearing and appeals procedures.

II. Criteria by which a son or a daughter can establish that he or she has been providing care:

An exemption to estate recovery is made in cases where a son or daughter can establish that they provided care to the individual that enabled them to stay at home rather than in an institution. The adult child must provide documentation that they resided with the parent for at least 24-months immediately preceding the beneficiary's admission into an institution and that they have resided there continuously since the institutionalization began. Documentation must establish that the adult child used the beneficiary's address as their mailing address, on their driver's license or voter registration, and that their address remained unchanged throughout this entire time period. Additionally, a parent's or treating physician's written statement that the adult child's presence in the home enabled the parent to live in the community is accepted as proof of providing required care.

III. Definitions

Estate

Includes all real and personal property of the decedent, trust, or other person whose affairs are subject to the Alaska Uniform Probate Code (AS 13.06-13.13) as originally constituted and as it exists from time to time during its administration.

Individual's Home

The dwelling in which the recipient has an ownership interest and which the recipient occupied as his/her primary dwelling prior to, or subsequent to, his/her admission to a medical institution.

Equity Interest in the Home

Equity interest in the home is recognized by Alaska Law and generally understood to be equal to the fair market value less any encumbrances.

Residing in the Home for at Least One or Two Years on a Continuing Basis

Exemptions to estate recovery are made if a sibling of the recipient can document that they have resided continuously in the home for at least 12-months prior to the institutionalization and have remained in the home since. Documentation must establish that the sibling child used the beneficiary's address as their mailing address, on their driver's license or voter registration, and that their address remained unchanged throughout this entire time period. Please see Section II, above, for verification requirements of adult children living in the home for at least two years on a continuing basis.

TN No: 03-13 Approval Date: JUL 22 2004 Effective Date: December 1, 2003

Supersedes TN No. N/A

Liens and Adjustments or Recoveries

Lawfully Residing

Residing in a manner not contrary to or forbidden by law and with the recipient's knowledge and consent.

IV. Standards and procedures for waiving estate recovery when it would cause undue hardship:

One or more of the following conditions may constitute a finding of undue hardship resulting in all or part of the Department's claim against an estate to be waived in an effort to avoid impoverishment of the deceased recipient's family:

- The estate's only asset produces income and recovery would cause the survivors' loss of livelihood;
- A survivor's primary residence is the estate's only significant asset and state recovery of it would cause impoverishment of the survivor as defined below:
 - State recovery of estate's proceeds would make the survivor eligible for public assistance;
 - A survivor could discontinue eligibility for public assistance if they were to receive the estate;
 - Recovery would deprive the survivor of food, clothing, shelter or other necessities of life, or medical care, thereby endangering the survivor's health and safety.
- The estate subject to recovery is a home of modest value defined as 50% or less of the average price of homes within the region or major community, based on Alaska Department of Labor statistics and periodically compared to census data adjusted for inflation. Home value is determined as of the date of the recipient's death.

Applicants for undue hardship waivers must have a beneficial interest in the estate and must apply within thirty (30) days of receiving notice of the Department's claim. An application filed up to thirty (30) days late may be treated as timely if the applicant demonstrates good cause for filing late. The filing of a claim by the Department in a probate proceeding shall constitute notice to all heirs.

Other conditions for waiving estate recovery:

- Low income Medicare beneficiaries who receive assistance from the Alaska Medical Assistance Program only in the form of payment for their Medicare copayments and/or deductibles are exempt from estate recovery.
- Medicaid expenditures made for services that the recipient would not have been required to pay for if the recipient were not eligible for Medicaid are exempt from recovery.
- Certain American Indian and Alaska Native income, resources, and property (including rents, leases, royalties, usage rights, or income from them) are exempt from recovery if they are :
 - located on or near, or within the most recent boundaries of a current or prior federally recognized or designated reservation,
 - derived from tribal lands,
 - related to natural resources (including their extraction or harvesting) derived from protected tribal lands, if the protected source can be clearly traced;
 - held in trust status or judgement funds that are exempt from recovery by other laws and regulations,
 - originally protected assets and ownership interests that have been inherited, if the protected source can be clearly traced;
 - ownership interests in or usages rights to items not covered above, with unique religious spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

TN No: 03-13 Approval Date: JUL 22 2004 Effective Date: December 1, 2003

Supersedes TN No. N/A

Liens and Adjustments or Recoveries

V. Cost effectiveness defined:

The department will pursue a claim only if it determines that the potential recovery amount would result in twice the administrative and legal cost of pursuing the claim, with a minimum pursuable net amount of \$10, 000. In assessing the value of an estate, the department will consider all other claims against the estate having precedence under state statute. Administrative and legal costs include, but are not limited to, the costs of:

- a. Adverstising, filing, and excercising the lien,
- b. legal representation of the state in court,
- c. tracking property with potential for a lien and then tracking its subsequent recovery,
- d. any and all costs associated with repair of the property to bring it into saleable condition,
- e. insurance costs to protect the asset,
- f. all costs associated with advertising, listing and selling the home including any and all applicable closing fees.

VI. Describes collection procedures including advance notice requirements, methods for applying for a waiver, hearing and appeals procedures, and time frames:

When the State determines that a client cannot be expected to return home, or learns of the death of a client, the case is reviewed to determine the value of the estate, whether there are heirs, and if it will be cost-effective to proceed with recovery. Once the decision is reached to place a lien on the estate, the department provides written notice to known representatives, heirs, or beneficiaries of the State's intent to proceed with collection on the estate. This notice specifies:

- The clients name, social security number, if known, date of birth and date of death, if deceased;
- How the term "lien" is defined;
- That the individual will not lose ownership of their home if a lien is imposed;
- The amount of recoverable Medical Assistance correctly paid on behalf of the client;
- The department's intent to file a lien against the client's real property to recover the applicable Medical Assistance paid on behalf of the client.

Notices also provide information on how to request a hardship waiver and how to appeal the department's decision to proceed with recovery. Appeals may contest the amount of recoverable medical assistance identified by the department or whether the deceased client had legal title to the real property at the time of the client's death. Appeals must be written, signed, and sent to the Third Party Liability section of the Division of Health Care Services within 30 days of the date of receipt of the notice. Appeals must also include the reason for contesting the Department's decision and contact information for the representative.

Additionally, the notice presents the following information to heirs for requesting an undue hardship waiver of estate recovery:

- How to request a waiver,
- Where to submit a waiver request;
- Waiver requests must be submitted within 30 days of recovery notice receipt;
- Decisions on waiver requests are made by the department within 30 days of the request;
- Appeal rights available to them if a waiver request is denied.

TN No: 03-13 Approval Date: JUL 22 2004 Effective Date: December 1, 2003

Supersedes TN No. N/A